



U.S. Citizenship
and Immigration
Services

identifying data derived from
this document is not to be
distributed outside of government privacy

FILE: EAC 03 040 53288 Office: VERMONT SERVICE CENTER

Date: JUN 7 2004

IN RE: Petitioner: [REDACTED]
Beneficiary: [REDACTED]

PETITION: Petition for a Nonimmigrant Worker Pursuant to Section 101(a)(15)(H)(i)(b) of the
Immigration and Nationality Act, 8 U.S.C. § 1101(a)(15)(H)(i)(b)

ON BEHALF OF PETITIONER:

INSTRUCTIONS:

This is the decision of the Administrative Appeals Office in your case. All documents have been returned to the office that originally decided your case. Any further inquiry must be made to that office.

Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The service center director denied the nonimmigrant visa petition and the matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed. The petition will be denied.

The petitioner [Association for the Help of Retarded Children] is a not-for-profit organization that provides services to the developmentally disabled. It seeks to employ the beneficiary as a client coordinator. The petitioner endeavors to classify the beneficiary as a nonimmigrant worker in a specialty occupation pursuant to section 101(a)(15)(H)(i)(b) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1101(a)(15)(H)(i)(b).

The director denied the petition because the proffered position is not a specialty occupation. On appeal, counsel submits a brief.

Section 214(i)(1) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1184(i)(1), defines the term "specialty occupation" as an occupation that requires:

- (A) theoretical and practical application of a body of highly specialized knowledge, and
- (B) attainment of a bachelor's or higher degree in the specific specialty (or its equivalent) as a minimum for entry into the occupation in the United States.

Pursuant to 8 C.F.R. § 214.2(h)(4)(iii)(A), to qualify as a specialty occupation, the position must meet one of the following criteria:

- (1) A baccalaureate or higher degree or its equivalent is normally the minimum requirement for entry into the particular position;
- (2) The degree requirement is common to the industry in parallel positions among similar organizations or, in the alternative, an employer may show that its particular position is so complex or unique that it can be performed only by an individual with a degree;
- (3) The employer normally requires a degree or its equivalent for the position; or
- (4) The nature of the specific duties is so specialized and complex that knowledge required to perform the duties is usually associated with the attainment of a baccalaureate or higher degree.

Citizenship and Immigration Services (CIS) interprets the term "degree" in the criteria at 8 C.F.R. § 214.2(h)(4)(iii)(A) to mean not just any baccalaureate or higher degree, but one in a specific specialty that is directly related to the proffered position.

The record of proceeding before the AAO contains: (1) Form I-129 and supporting documentation; (2) the director's request for additional evidence; (3) the petitioner's response to the director's request; (4) the director's denial letter; and (5) Form I-290B and supporting documentation. The AAO reviewed the record in its entirety before issuing its decision.

The petitioner is seeking the beneficiary's services as a client coordinator. Evidence of the beneficiary's duties includes: the I-129 petition; the petitioner's October 17, 2002 letter in support of the petition; and the

petitioner's response to the director's request for evidence. According to this evidence, the beneficiary would perform duties that entail: arranging for the use of community resources; coordinating and providing liaison between the client and the community; completing "DDP's" annually; developing and writing individual services plan; following up on quarterly meetings and monthly summary notes; reviewing all services rendered on a monthly basis; assisting participants and their families in assessing services such as Social Security and Medicaid; completing various program forms; and working with and assisting clients. In addition, the "Nontechnical Description of Job" in Part 5 of the petition reveals the following duties: "responsible for overall coordination and direction of program." The petitioner indicated that the proffered position "requires a theoretical and practical application of specialized knowledge in the allied health field or social sciences which includes language education."

The director found that the proffered position was not a specialty occupation because the petitioner has not demonstrated that the position requires a baccalaureate degree in a specific specialty. The director found further that the petitioner failed to establish any of the criteria found at 8 C.F.R. § 214.2(h)(4)(iii)(A).

On appeal, counsel submits an opinion from an academic expert who concludes that the proffered position requires at least a bachelor's degree in Human Services or a related field. Counsel states that the record contains numerous job postings for similar positions that demonstrate that this degree requirement is common to the industry among similar organizations. Counsel further states that the record contains a printout from the petitioner's website to show that the recruitment efforts initiated prior to the filing of the instant petition demonstrate that a bachelor's degree in Human Services is a minimum educational requirement for the proffered position. Counsel finally states that the proposed duties, which require, in part, a strong interdisciplinary background designed to develop one's understanding of human nature and to provide basic knowledge of physiology, pharmacology, methods and structures of human services, are so complex that such a degree is required.

The record contains the following documentation related to the educational requirements of the proffered position:

- Opinion, dated March 19, 2003, from Nan Bauer-Maglin, English professor and Academic Director of the City University of New York (CUNY), who states, in part, that the proffered position requires at least a bachelor's degree in Human Services or a related field;
- Statement, dated March 18, 2003, from the petitioner's associate executive director who states, in part: "The job posting for the position of Service Coordinator with the educational requirement of a Bachelor's degree in Human Services was placed on the agency's website on or about January 2001;
- Tax documents and resumes for the petitioner's other client coordinators reflecting various degrees in the following fields: business administration; psychology; community mental health; fine arts; elementary education; music and vocal - education; special education; philosophy, politics, and law; sociology; teaching - English and French; teaching - history and English; and teaching - Literature and Language; and
- Various job postings.

Upon review of the record, the petitioner has established none of the four criteria outlined in 8 C.F.R. § 214.2(h)(4)(iii)(A). Therefore, the proffered position is not a specialty occupation.

The AAO turns first to the criteria at 8 C.F.R. § 214.2(h)(4)(iii)(A)(1) and (2): a baccalaureate or higher degree or its equivalent is the normal minimum requirement for entry into the particular position; a degree requirement is common to the industry in parallel positions among similar organizations; or a particular position is so complex or unique that it can be performed only by an individual with a degree.

Factors often considered by CIS when determining these criteria include: whether the Department of Labor's *Occupational Outlook Handbook (Handbook)* reports that the industry requires a degree; whether the industry's professional association has made a degree a minimum entry requirement; and whether letters or affidavits from firms or individuals in the industry attest that such firms "routinely employ and recruit only degreed individuals." See *Shanti, Inc. v. Reno*, 36 F. Supp. 2d 1151, 1165 (D.Min. 1999)(quoting *Hird/Blaker Corp. v. Slattery*, 764 F. Supp. 872, 1102 (S.D.N.Y. 1991)).

The AAO routinely consults the *Handbook* for its information about the duties and educational requirements of particular occupations. The AAO does not concur with counsel that the proffered position is a specialty occupation. The proffered position is similar to that of a social and human service assistant. The Handbook, 2004-2005 edition, describes the position of a social and human service assistant, in part, as follows:

Social and human service assistants provide direct and indirect client services to ensure that individuals in their care reach their maximum level of functioning. They assess their clients' needs, establish their eligibility for benefits and services such as food stamps, Medicaid, or welfare, and help to obtain them. They also arrange for transportation and escorts, if necessary, and provide emotional support. Social and human services assistants monitor and keep case records on clients and report progress to supervisors and case managers.

Social and human service assistants play a variety of roles in a community. They may organize and lead group activities, assist clients in need of counseling or crisis intervention, or administer a food bank or emergency fuel program. . . .

No evidence in the *Handbook* indicates that a baccalaureate or higher degree, or its equivalent, is required for a social and human service assistant.

Regarding parallel positions in the petitioner's industry, the petitioner submitted Internet job postings for various positions including social workers and service coordinators. The petitioner has not demonstrated that the proffered position is as complex as the advertised positions. For example, one of the positions is that of a social worker for a multi-service agency with an educational requirement of a bachelor's degree in social work, human services, or psychology. The petitioner of the instant position, however, has not demonstrated that the proffered position is that of a social worker. Another position is that of a service coordinator for a medical and health research association. There is no evidence to show that the employer in this advertised position is similar to the petitioner, or that the advertised position is parallel to the position in the instant petition. In addition, some of the advertised positions, such as the service coordinator position for St. Christopher-Ottillie, do not contain a comprehensive description of the proposed duties, and, therefore, the AAO is unable to determine whether they are parallel to the proffered position. Thus, the advertisements have little relevance.

The record also does not include any evidence from professional associations regarding an industry standard, or documentation to support the complexity or uniqueness of the proffered position. The petitioner has, thus, not established the criteria set forth at 8 C.F.R. § 214.2(h)(4)(iii)(A)(1) or (2).

The AAO now turns to the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(3) – the employer normally requires a degree or its equivalent for the position. On appeal, counsel states, in part: “[W]hile in 1997-2000 the Petitioner only employed individuals with a Bachelor’s degree in the [sic] variety of studies, **from January 2001 the Petitioner only employed individuals with a Bachelor’s or Master’s degree in Education.**” Regardless of the hiring date of the petitioner’s client coordinators, the record reflects that a variety of educational backgrounds is acceptable, such as the following: business administration; psychology; community mental health; fine arts; elementary education; music and vocal - education; special education; philosophy, politics, and law; sociology; teaching - English and French; teaching - history and English; and teaching – Literature and Language. As such, the petitioner has not demonstrated that a baccalaureate degree in a specific specialty is normally required for the proffered position, and the petitioner has not met its burden of proof in this regard. *See Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972).

Finally, the AAO turns to the criterion at 8 C.F.R. § 214.2(h)(iii)(A)(4) – the nature of the specific duties is so specialized and complex that knowledge required to perform the duties is usually associated with the attainment of a baccalaureate or higher degree.

To the extent that they are depicted in the record, the duties do not appear so specialized and complex as to require the highly specialized knowledge associated with a baccalaureate or higher degree, or its equivalent, in a specific specialty. Therefore, the evidence does not establish that the proffered position is a specialty occupation under 8 C.F.R. § 214.2(h)(4)(iii)(A)(4).

As related in the discussion above, the petitioner has failed to establish that the proffered position is a specialty occupation. Accordingly, the AAO shall not disturb the director’s denial of the petition.

The burden of proof in these proceedings rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. The petitioner has not sustained that burden.

ORDER: The appeal is dismissed. The petition is denied.